> Their Lordships do not overlook the fact that the defendant remained registered as the owner of the lorry and that no permission was given for the sale: but this did not prevent the property in it passing to the plaintiff. The registration book is not in Malaya, any more than it is in England, a document of title. The title passed by the sale and delivery of the lorry to the plaintiff. The absence of registration would no doubt put the plaintiff in difficulty if he had to prove his title, but it would not invalidate it, see *Bishopsgate Motor Finance Corpn Ltd* v *Transport Brakes Ltd* at p 388.

In that case, SA and SS came to an illegal arrangement whereby SA would buy a lorry and register it in the name of SS as SA could not get a haulage permit to use the lorry for the carriage of goods whereas SS could and did. SA had possession of the lorry and used it as his own but in the name of SS. SA also paid all the operating expenses including road tax, insurance, petrol and also income tax on the profits of the operations. The parties fell out and SS took possession of the lorry. SA commenced an action for detinue and trespass. The Privy Council held that he was entitled to succeed on both counts: in trespass, because he had actual possession of the lorry before it was taken by SS, and in detinue because the property in the lorry had passed to him even though the transaction was illegal.

In the present case, the legal title to the said car passed to the plaintiffs when they bought it. They had given possession of the said car to the defendant and registered it in his name for a specific purpose, with no intention whatever of transferring legal or beneficial ownership thereof to the defendant. The said car was entered in its books as an asset of the company, as confirmed by their income tax returns. As owners, they were entitled to immediate possession of the said car upon the defendant ceasing employment with them. They were probably entitled to possession of the said car even if the defendant had not ceased to be an employee, as the plaintiffs' contractual obligation was to provide a transport facility and not a specific motor car.

For the above reasons, I gave judgment in favour of the plaintiffs with costs.

Application allowed.

Solicitors: *Khattar Wong & Partners; Hin Rai & Tan.*

Reported by *Mathavan Devadas*

Indian Bank v Ramachandran & Ors

HIGH COURT (SINGAPORE) — SUIT NO 9300 OF 1984
GOH PHAI CHENG JC
14 MARCH 1991

Banking — Guarantee — Standard form guarantee to be executed by first to seventh defendants jointly and severally — First to sixth defendants executed the guarantee which named all seven defendants while seventh defendant executed separate guarantee — Whether first to seventh defendants liable jointly and severally under the two guarantees

The plaintiffs carried on business as bankers in Singapore. All the seven defendants were directors of Wesmapack (Singapore) Pte Ltd ('the company'). In January 1982, the company applied for banking facilities from the plaintiffs. The plaintiffs were willing to extend the banking facilities to the company provided the seven defendants executed the plaintiffs' standard form guarantee for the said facilities. The guarantee (the 'first guarantee') was prepared and signed by the first to sixth defendants only as the seventh defendant was away in England. The seventh defendant, however, signed a separate standard form guarantee (the 'second guarantee') which was identical to the first guarantee except that the first guarantee had all the names of the seven defendants as co-sureties and the second guarantee had only the name of the seventh defendant shown as surety. The company was however unable to settle the amount due under the banking facilities with the plaintiffs and was wound up on 11 November 1983. The plaintiffs then demanded payment from the seven defendants on the basis that all seven defendants were jointly and severally liable under the first and second guarantees notwithstanding the first guarantee was only signed by the first to sixth defendants and the second guarantee was only signed by the seventh defendant. The plaintiffs' counsel submitted that the essential issue, in the circumstances of the case, was that where the parties had an agreement for guarantees to be furnished by the directors of the company, that agreement need not be evidenced on a single document in order that all the seven defendants can be held jointly and severally liable for the banking facilities.

Held, dismissing the plaintiffs' claim against the third to seventh defendants:

(1) The fourth and sixth defendants had not given their consent to the plaintiffs that the seventh defendant need not sign the first guarantee and that the second guarantee signed by the seventh defendant is to be regarded as an addendum to the first guarantee. The fourth, sixth and seventh defendants were not given a copy of the first guarantee either by the company or the plaintiffs and they were only aware that the seventh defendant signed the second guarantee and did not sign the first guarantee after the plaintiffs commenced proceedings for the recovery of the sum guaranteed by all seven defendants.

(2) The first guarantee had a recital which stated that it was to be signed by the seven defendants who were to be jointly and severally liable for overdraft facilities granted by the plaintiffs to the company. It was a condition precedent that the first guarantee was to be executed by all persons named as co-sureties. Where a promise was intended to be made by several persons jointly but if any one of those persons fails to execute the instrument of the agreement, there is no contract and no liability is incurred by such of them as have entered into the agreement. The plaintiffs were not able to

show that the first to sixth defendants had consented to dispense with the execution of the first guarantee by the seventh defendant. Consequently they were not entitled to enforce it. The second guarantee could not also in law be regarded as an addendum to the first guarantee.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 25 of 1991.]

Cases referred to

1 *Evans* v *Bembridge* (1855) 69 ER 741 (refd)
2 *National Provincial Bank of England* v *Brackenbury* (1906) 22 TLR 797 (refd)
3 *James Graham & Co (Timber) Ltd* v *Southgate-Sands & Ors* [1985] 2 All ER 344 (refd)
4 *Hansard* v *Lethbridge* (1892) 8 TLR 346 (refd)
5 *Heng Cheng Swee* v *Bangkok Bank Ltd* [1976] 1 MLJ 267 (distd)
6 *Oriental Bank of Malaya Ltd* v *N Subramaniam* [1958] MLJ 35 (distd)
7 *Molsons Bank* v *Cranston* (1918) 45 DLR 316 (refd)
8 *Timmins* v *Moreland Street Property Co Ltd* [1958] 1 Ch 110; [1957] 3 All ER 265 (distd)

Bala Chandran for the plaintiffs.
J Chellam for the first defendant.
TU Naidu for the second defendant.
P Suppiah for the fourth defendant.
R Joethy for the sixth defendant.
M Ramasamy for the seventh defendant.

Cur Adv Vult

Goh Phai Cheng JC: The plaintiffs' claim is for the sum of $130,000 with interest thereon and costs against all the defendants under the terms of a guarantee dated 19 January 1982 signed by the first to sixth defendants and another guarantee dated 14 March 1982 signed by the seventh defendant only. The plaintiffs are carrying on business as bankers in Singapore. All the seven defendants were the directors of a company known as Wesmapack (Singapore) Pte Ltd (hereinafter referred to as 'the company') which had since March 1981 been a customer of the plaintiffs.

This action was tried by this court on 21 and 22 January 1991 and it was adjourned to 25 January 1991 when the plaintiffs' claim against the third, fourth, fifth, sixth and seventh defendants were dismissed with costs. They have now appealed to the Court of Appeal.

At the commencement of the hearing of this action, Mr R Joethy informed this court that the third and fifth defendants are bankrupt and he no longer represented them. The respective counsel for the first defendant and second defendant also informed the court that their clients consented to judgment to be entered against them in favour of the plaintiffs for the sum of $130,000 with interest on the said amount at the rate of 2¼% per annum above the plaintiffs' prime lending rate from 28 October 1983 to the date of payment, and all costs, charges and expenses which the plaintiffs might incur in obtaining or seeking to obtain payment of all or any part of the above sum, to be taxed on a solicitor and client basis. Accordingly, judgment was entered against the first and second defendants for the said sum of $130,000 with interest and costs as per para 10(b)(ii) and (c) of the amended statement of claim.

Counsel for the plaintiffs had, during the course of the hearing, asked this court to adjourn the plaintiffs' claim against the third and fifth defendants. I decided that it would not be appropriate to do so as the plaintiffs' claims against the third and fifth defendants are that they are jointly and severally liable with the other defendants in this action for the overdraft facilities granted to the company under the first and second guarantees. The outcome of the plaintiffs' claim against the third and fifth defendants must follow the outcome of their claim against the other defendants in this action.

Mr Jeganathan ('PW1'), a bank officer of the plaintiffs, gave evidence for the plaintiffs and the fourth, sixth and seventh defendants gave evidence before this court.

In January 1982 or thereabouts, the company applied for banking facilities from the plaintiffs. The company wanted a temporary overdraft facility of $130,000 for a period of 60 to 90 days. It intended to apply for a facility of $600,000 subsequently within 90 days. The plaintiffs were willing to extend overdraft facilities to the company provided that all the seven directors gave their personal guarantees for the facilities extended to the company. The plaintiffs prepared a guarantee on or about 18 January 1982 with the names of all the seven defendants stated therein as co-sureties and handed the same to the second defendant for execution by all the seven defendants. The said guarantee (hereinafter referred to as 'the first guarantee') was signed by all the defendants except the seventh defendant who was away in England pursuing a course of studies. The said guarantee was returned to the plaintiffs on 19 January 1982 by the third defendant, the general manager of the company. The third defendant informed the plaintiffs of the fact that the seventh defendant had not signed the said guarantee as he was away in England.

On 22 January 1982, the company wrote to the plaintiffs saying that they required the use of the temporary overdraft facilities on an urgent basis. The plaintiffs' manager, Mr Reddy, told the second defendant, the managing director of the company, that he wanted the guarantee of the seventh defendant and the second defendant agreed to get a separate guarantee of the seventh defendant. PW1 said in his evidence-in-chief that the plaintiffs allowed the company to use the facilities on 1 February 1982 when the second defendant, Dr Dhanapal, promised to obtain a separate guarantee from the seventh defendant when his manager, Mr Reddy,

insisted that he wanted the signature of the seventh defendant before releasing facilities to the company. According to PW1, his manager instructed him to prepare a separate guarantee for the seventh defendant to sign. The plaintiffs had only one standard form for all guarantees furnished by their clients. PW1 took a standard form of the plaintiffs and typed the seventh defendant's name and other particulars on it and the same was forwarded to the company to obtain the seventh defendant's signature on the guarantee and it was returned to the plaintiffs sometime in March 1982 duly signed by the seventh defendant on 14 March 1982. This guarantee was dated 14 March 1982 (hereinafter referred to as 'second guarantee'). The first and second guarantees are identical except for the fact that the first guarantee has all the names of the seven defendants shown therein as co-sureties and the second guarantee has only the name of the seventh defendant shown therein as surety.

During his cross-examination by counsel for the seventh defendant, PW1 was asked to explain what he meant when he said the second defendant told him that he (the second defendant) would get the guarantee of the seventh defendant. PW1's reply was 'We could not have released the guarantee for the seventh defendant to sign as we want to hold on to the document'. PW1 further said that as far as the plaintiffs were concerned, the second guarantee was an addendum to the first guarantee.

The company was allowed to use the overdraft facilities from 1 February 1982. Thereafter, the company utilized the overdraft facilities and by 11 March 1983, the company's account was overdrawn by the amount of $130,619.10. Despite requests and demands, the company did not settle the amount due under the overdraft account to the plaintiffs. The company was wound up pursuant to an order of court on 11 November 1983.

By a letter dated 29 September 1984 addressed to each of the defendants, the plaintiffs through their solicitors demanded payment from the defendants of the amount due to the plaintiffs from the company. As no payment was made, the plaintiffs commenced proceedings against the seven defendants.

Paragraph 3 of the plaintiffs' statement of claim reads:

> In consideration of the plaintiffs making advances or otherwise giving credit to the company, the defendants pursuant to the following written personal continuing guarantees duly signed by the defendants jointly and severally guaranteed the payment on demand of all moneys due to the plaintiffs from the company on, inter alia, overdraft and default guarantee facilities granted to the extent of $130,000 and all interest thereon:

Date	Amount	Guarantors
19 January 1982	$130,000	The abovenamed first, second, third, fourth, fifth and sixth defendants.
14 March 1982	$130,000	The abovenamed seventh defendant.

It is important to note that the basis of the plaintiffs' claim is that all the seven defendants are jointly and severally liable under the first and second guarantees for the payment of overdraft facilities extended by the plaintiffs to the company to the extent of $130,000 notwithstanding the fact that:

(a) the first guarantee which had all the seven defendants named therein as co-sureties was only signed by the first six defendants; and
(b) the second guarantee was only signed by the seventh defendant who is the only named surety on that guarantee.

The third, fifth and sixth defendants who filed a separate defence jointly averred that they were not liable under the first guarantee as claimed or at all for the following reasons:

(a) the third, fifth and sixth defendants signed the first guarantee on the faith, reliance and understanding that all seven defendants (including the seventh defendant) would sign the same. The seventh defendant did not sign the first guarantee and the plaintiffs did not fulfil this condition precedent and accepted the said guarantee so altered;
(b) if seven sureties were expected to join in making the first guarantee, (as would be evident from its form) and six of them signed it but, without their approval or express waiver, the seventh did not join in guaranteeing the obligation, the six who signed are not bound;
(c) that the first guarantee is materially different and varied from one intended to bind the third, fifth and sixth defendants;
(d) the first guarantee is, on the face of it, defective and not binding on the third, fifth and sixth defendants'
(e) the plaintiffs have not followed established and prudent banking practice by requiring the seventh defendant to sign the first guarantee;
(f) the third, fifth and sixth defendants did not agree to be liable despite the fact that the seventh defendant did not sign the first guarantee; and
(g) the first guarantee is replete with inconsistencies and inaccuracies and the third, fifth and sixth defendants would, so far as is necessary, rely on the contra proferentem rule.

The fourth defendant who filed a separate defence averred that:

(a) the first guarantee was to be executed by the seventh defendant as a co-surety (as it could be seen from the face of it), and as the seventh defendant did not sign it, the fourth defendant is not liable thereunder to the plaintiffs in any way and for any sum whatsoever; and there is no contract and the guarantee is nullified;
(b) the fourth defendant never agreed with the plaintiffs that the signature of the seventh defendant was to be dispensed with;
(c) the first guarantee for the sum of $130,000 is an incomplete document in that the seventh defendant did not sign it and is not a party to it;
(d) it was the duty of the plaintiffs to obtain the signature of the seventh defendant and as they have failed to do so the said guarantee is void and unenforceable against the fourth defendant;
(e) the fourth defendant was not contractually bound in law by the first guarantee because of the failure of one of the co-sureties, namely, the seventh defendant to sign it which is a condition precedent to the fourth defendant's becoming liable; and
(f) the fourth defendant never consented to be a surety without the seventh defendant joining in to indemnify the plaintiffs.

The seventh defendant who also filed a separate defence alleged, inter alia, that:

(a) it was agreed between the plaintiffs and all the defendants that in consideration of the plaintiffs making advances or otherwise giving credit to the company, the seven defendants shall enter into a guarantee jointly and severally guaranteeing the plaintiffs' payment on demand of credit given to the company to the extent of $130,000;
(b) contrary to the said agreement the plaintiffs accepted a guarantee signed by the first, second, third, fourth, fifth and sixth defendants dated 19 January 1982 and advanced credit facilities to the company; and
(c) unaware that the plaintiffs had accepted a guarantee signed by the first, second, third, fourth, fifth and sixth defendants dated 19 January 1982 and advanced credit facilities to the company the seventh defendant signed the guarantee dated 14 March 1982 in the belief that the first, second, third, fourth, fifth and sixth defendants would also be parties to the said guarantee and then be equally liable on the same.

It was the seventh defendant's contention that the second guarantee is not the guarantee that the seventh defendant had agreed to enter into and he is therefore not liable under the same. The seventh defendant had averred that there is no consideration for the second guarantee signed by him. However, this contention was abandoned by him during the the course of the hearing.

There is a reply to the defence of the seventh defendant and there is no reply to the defence of the fourth defendant or to the sixth defendant. That reply answered (as it could be seen) what was raised by the seventh defendant in his defence.

The main issue before this court was whether the seven defendants are jointly and severally liable to the plaintiffs for overdraft facilities extended to the company under the first guarantee which had been signed only by six of the seven persons named in that guarantee as co-sureties and the second guarantee which was executed only by the seventh defendant, who is the only named surety on the second guarantee. Both guarantees are in the plaintiffs' standard form. They are identical except that under the second guarantee, the seventh defendant is the only nominated surety for the overdraft facilities granted by the plaintiffs to the company and all the seven defendants are nominated as co-sureties in the first guarantee.

The evidence of the fourth defendant ('DW 1') is briefly as follows:

(a) He signed the first guarantee in the belief that all the other six directors would do so.
(b) Unknown to him, the seventh defendant did not sign the first guarantee.
(c) The plaintiffs did not give a copy of the first guarantee to him and the first time he saw that guarantee was when these proceedings were instituted against him.
(d) He would not have agreed to become a guarantor if all the other six directors did not become guarantors for the overdraft facilities.
(e) He never agreed with anyone to dispense with the signing of the first guarantee by the seventh defendant.
(f) He had no knowledge of the plaintiffs taking the second guarantee from the seventh defendant and even if he had knowledge of it, that knowledge would not affect his case.

The evidence of the sixth defendant ('DW 2') is briefly as follows:

(a) He signed the first guarantee because every other director of the company had to sign the document.
(b) He would not have signed the first guarantee if any one of the seven directors had not signed.
(c) He would not have allowed a waiver of any one director from signing the first guarantee.
(d) The plaintiffs did not tell him that the seventh defendant had not signed the guarantee.
(e) The plaintiffs did not give him a copy of the first guarantee.
(f) The first time he saw a copy of the first guarantee was after these proceedings had commenced and it

was then that the realized only six directors had signed the document.

The evidence of the seventh defendant ('DW 3') is briefly as follows:

(a) While in United Kingdom, he was told by his brother, Dr Dhanapal, that the company was trying to get credit facilities from a bank.
(b) He received the second guarantee sometime in March 1982 when he was still in the United Kingdom. He signed it on the same day he received it. It was 14 March 1982.
(c) Prior to receiving this document, he had heard from his brother, Dr Dhanapal, that it was for purpose of obtaining overdraft facilities from the plaintiffs for the company. Dr Dhanapal told him all directors would be signing the document.
(d) If any of the directors had not signed, he would not have signed. Should the company not be able to pay, all the directors would be liable. They were supposed to be jointly liable.
(e) He expected the company to get all directors to sign this document.

Counsel for the plaintiffs challenged the evidence of the fourth, sixth and seventh defendants that they were not given a copy of the first guarantee and were unaware that the seventh defendant had not signed the first guarantee until these proceedings have commenced. He also suggested to these three defendants that they were aware that the seventh defendant was away and that he could not have signed the first guarantee, and that the reason why the second guarantee was prepared for and executed by the seventh defendant was that the company needed the overdraft facilities urgently and that it was agreed that a separate guarantee would be obtained from the seventh defendant as he was away. These suggestions were denied by these defendants.

Counsel for the plaintiffs also suggested to the fourth, sixth and seventh defendants that they had consented to the seventh defendant signing the second guarantee. This suggestion was also denied by these three defendants.

Having considered both the oral and documentary evidence adduced at hearing, I found that when the company needed the use of the overdraft facilities urgently, the second defendant agreed with the plaintiffs' officer, Mr Reddy, to get the separate guarantee of the seventh defendant who had not signed the first guarantee. I also found that the fourth and sixth defendants had not given their consent to the plaintiffs that the seventh defendant need not sign the first guarantee and that the second guarantee signed by the seventh defendant is to be regarded as an addendum to the first guarantee. I also found that the fourth, sixth and seventh defendants were not given a copy of the first guarantee either by the company or the plaintiffs and that they were only aware that the seventh defendant signed the second guarantee and did not sign the first guarantee after the plaintiffs had commenced proceedings for the recovery of the sum guaranteed by the seven defendants. In arriving at the aforesaid conclusions, I took into account of the fact that the fourth defendant had at times not given his evidence in a frank and straightforward manner. I had also noted that there was no evidence from the plaintiffs' witness, PW1, that the fourth and sixth defendants had agreed with the plaintiffs or any of the plaintiffs' officers that the seventh defendant need not sign the first guarantee and that he should sign a separate guarantee instead. The evidence from PW1 was that the second defendant had agreed to get the separate guarantee of the seventh defendant and that it was the third defendant who informed PW1 that the first guarantee was not signed by the seventh defendant. The seventh defendant who was away at the material time could not have given his consent for the new arrangements for the execution of two guarantees instead of one guarantee where all seven defendants would have signed as guarantors.

Plaintiffs' counsel submitted that all the other six defendants knew that the seventh defendant was not in Singapore and that it was improbable or impossible for all seven signatures to be obtained on the same instrument and consequently the essential issue was: where the parties had an agreement for guarantees to be furnished by the directors of the company, that agreement need not be evidenced on a single document in order that all the seven director of the company can be held jointly and severally liable for the overdraft facilities extended to the company.

In my opinion, the plaintiffs are not entitled to enforce the two guarantees against all the seven defendants because the first guarantee was not signed by the seventh defendant and secondly, the second guarantee by the seventh defendant cannot in law be regarded as an addendum to the first guarantee. The first guarantee has a recital which says that it is to be signed by the seven defendants who are jointly and severally liable for the overdraft facilities granted by the plaintiffs to the company. It is a condition precedent that the first guarantee must be executed by all the persons named therein as co-sureties, and it is the plaintiffs' duty to see that it is executed by the proper parties. Where a promise is intended to be made by several persons jointly, if any one of those persons fail to enter into the agreement, or to execute the instrument of the agreement, there is no contract; and no liability is incurred by such of them as have entered into the agreement: see *Evans* v *Bembridge*;[1] *National Provincial Bank of England* v *Brackenbury*[2] and *James Graham & Co (Timber) Ltd* v *Southgate-Sands & Ors.*[3]

If one of the intended co-sureties did not sign the first guarantee, the plaintiffs must show that the co-sureties who signed it consented to dispense with the execution of the guarantee by the co-surety who had not signed before they are entitled to enforce it: see *Hansard* v *Lethbridge*[4] and *National Provincial Bank of England* v *Brackenbury*.[2] The plaintiffs in this case had not succeeded in showing that all the other six defendants had consented to dispense with the execution of the first guarantee by the seventh defendant.

Counsel for the plaintiffs urged this court to construe the two guarantees in the light of the surrounding circumstances which led to the execution of the two guarantees and he cited the cases of *Heng Cheng Swee* v *Bangkok Bank Ltd*[5] and *Oriental Bank of Malaya Ltd* v *N Subramaniam*[6] which held that a guarantee must not only be construed by the words used, but also with regard to the surrounding circumstances. Even if I had applied the principle laid down in these two cases, I am unable to arrive at the conclusion that the defendants are jointly and severally liable under the two guarantees to the plaintiffs for the payment of overdraft facilities granted to the company. There are two separate and distinct contracts of guarantee in this case. All the first six defendants are jointly and severally liable under the first guarantee. They are not co-sureties in relation to the seventh defendant who executed the second guarantee by himself. The plaintiffs attempted to create a marriage of convenience but the law does not permit that. The plaintiffs might have succeeded if there are clauses in the first guarantee to render it effective where one of the co-sureties failed to sign and to show that there is an intention to merge the first and second guarantees as one. The following passage from p 73 of O'Donovan Phillips, *The Modern Contract of Guarantee*, refers to the type of clause which I have in mind:

> Clauses are often found in the modern contract of guarantee purporting to render an individual guarantor liable despite the failure of other guarantors to execute the guarantee. An example is:
>
> 'This guarantee shall bind each of the signatories hereof notwithstanding that one or more of the persons named herein as a guarantor may never execute the same.'
>
> If there are other indications in the guarantee itself that other co-guarantors must execute the agreement (for example, by the use of the words 'joint and several'), it is thought that the specificity of this clause will override any such indications and the guarantors who do execute the agreement will be bound. It may be otherwise, however, if extrinsic evidence establishes that is a condition precedent to the operation of the guarantee that other guarantors must sign.

It is relevant to note that the above quotation made it clear that such a clause cannot save the agreement if extrinsic evidence establishes that there is a condition precedent to the operation of the guarantee that other guarantors must sign: see *Molsons Bank* v *Cranston*.[7] Probably, the simplest thing the plaintiffs could have done in the instant case was to have made the first six defendants sign a fresh guarantee with only the first six defendants named therein as co-sureties in addition to requiring the seventh defendant to execute the second guarantee.

The plaintiffs relied on the case of *Timmins* v *Moreland Street Property Co Ltd*[8] where the Court of Appeal held that if by implication a document refers to another and when the two read together are sufficient to constitute a needed memorandum, the agreement so evidenced in writing would be enforceable in law. Counsel referred this court to the following dictum of Jenkins LJ in the *Timmins*' case[8] at p 130:

> The rule has no doubt been considerably relaxed since *Peirce* v *Corf* was decided in 1874, but I think it is still indispensably necessary, in order to justify the reading of documents together for this purpose, that there should be a document signed by the party to be charged, which, while not containing in itself all the necessary ingredients of the required memorandum, does contain some reference, express or implied, to some other document or transaction. Where any such reference can be spelt out of a document so signed, then parol evidence may be given to identify the other document referred to, or, as the case may be, to explain the other transaction, and to identify any document relating to it. If by this process a document is brought to light which contains in writing all the terms of the bargain so far as not contained in the document signed by the party to be charged, then the two documents can be read together so as to constitute a sufficient memorandum for the purposes of s 40.

In my view, the rule in *Timmins*' case[8] is not applicable to the instant case where we are dealing with a contract of guarantee where there is no reference, expressed or implied, to another guarantee.

Appeal dismissed.

Solicitors: *Mallal & Namazie; Palakrishnan & Partners; P Suppiah & Co; Choo & Joethy; Ang Netto Rama & Wilson.*

Reported by *Liu Hern Kuan*